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BEFORE THE  
PARAMEDIC DISCIPLINARY REVIEW BOARD  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA

In the Matter of the Emergency Medical Technician- Paramedic License of: ) Enforcement Matter No. 22-0249  
)  
) OAH No. 2024050713  
**Bryan H. Monken,** )  
License No. P41318 ) **DECISION AND ORDER AFTER NON-ADOPTION**  
)  
Respondent. )  
)

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DECISION AFTER NONADOPTION

11 Pursuant to California Government Code section 11517(c)(2)(B), the Board may reduce or  
12 otherwise mitigate the penalty and adopt the balance of the proposed decision without notice or  
further proceedings.

13 Therefore, the attached Proposed Decision is hereby adopted in part by the Paramedic  
14 Disciplinary Review Board, Emergency Medical Services Authority as its Decision in this  
matter but the Board non adopts Legal Conclusion number 8 and modifies it as follows:

15 The Board's *Recommended Guidelines for Disciplinary Orders and Conditions of Probation,*  
16 *dated July 26, 2008* (Disciplinary Guidelines), recommends revocation stayed and 3 years'  
17 probation with terms and conditions as the minimum level of discipline for a violation of Health  
and Safety Code sections 1798.200(c)(5) and (c)(7) and one year of probation with terms and  
18 conditions for violation of 1798.200 (c)(10). Departure from the Disciplinary Guidelines is  
warranted here after taking the following into consideration:

19 This case involved a single patient with no actual harm to the patient. Evidence did not reveal  
20 the Respondent had prior disciplinary action against his certificate. Additional training and  
education in recordkeeping and prehospital care and treatment of patients could correct the  
21 Respondent's deficiencies, and the public would be protected during the period of monitored  
probation.

22

ORDER

23 Emergency Medical Technician-Paramedic license number P41318, issued to respondent Bryan  
24 H. Monken is REVOKED. However, such revocation is stayed, and the license placed on  
probation for three years upon the following terms and conditions:

- 1 **1. Probation Compliance:** The respondent shall fully comply with all terms and conditions  
2 of the probationary order. The respondent shall fully cooperate with the EMSA in its  
3 monitoring, investigation, and evaluation of the respondent's compliance with the terms  
4 and conditions of this probationary order. The respondent shall immediately execute and  
submit to the EMSA all Release of Information forms that the EMSA may require of the  
respondent.
- 5 **2. Personal Appearances:** As directed by the EMSA, the respondent shall appear in person for  
6 interviews, meetings, and/or evaluations of the respondent's compliance with the terms and  
7 conditions of the probationary order. The respondent shall be responsible for all costs  
associated with this requirement.
- 8 **3. Quarterly Report Requirements:** During the probationary period, the respondent shall  
9 submit quarterly reports covering each calendar quarter which shall certify, under penalty of  
10 perjury, and document compliance by the respondent with all the terms and conditions of his  
probation. If the respondent submits his quarterly reports by mail, it shall be sent as Certified  
Mail.
- 11 **4. Employment Notification:** During the probationary period, the respondent shall notify the  
12 EMSA in writing of any EMS employment. The respondent shall inform the EMSA in  
13 writing of the name and address of any prospective EMS employer prior to accepting  
14 employment. Additionally, the respondent shall submit proof in writing to the EMSA of  
15 disclosure, by the respondent, to the current and any prospective EMS employer of the  
16 reasons for and terms and conditions of the respondent's probation. The respondent  
17 authorizes any EMS employer to submit performance evaluations and other reports which  
18 the EMSA may request that relate to the qualifications, functions, and duties of prehospital  
19 personnel. Any and all notifications to the EMSA shall be by certified mail.
- 20 **5. Notification of Termination:** The respondent shall notify the EMSA within seventy-two  
21 (72) hours after termination, for any reason, from his prehospital medical care employer. The  
22 respondent must provide a full, detailed written explanation of the reasons for and  
23 circumstances of his termination. Any and all notifications to the EMSA shall be by certified  
24 mail.
- 25 **6. Functioning as a Paramedic:** The period of probation shall not run anytime that the  
respondent is not practicing as a paramedic within the jurisdiction of California. If the  
respondent, during his probationary period, leaves the jurisdiction of California to practice as  
a paramedic, the respondent must immediately notify the EMSA, in writing, of the date of  
such departure and the date of return to California, if the respondent returns. Any and all  
notifications to the EMSA shall be by certified mail.
- 7. Obey All Related Laws:** The respondent shall obey all federal, state and local laws, statutes,  
regulations, written policies, protocols and rules governing the practice of medical care as a  
paramedic. The respondent shall not engage in any conduct that is grounds for disciplinary  
action pursuant to Section 1798.200. To permit monitoring of compliance with this term, if  
the respondent has not submitted fingerprints to the EMSA in the past as a condition of

1 licensure, then the respondent shall submit his fingerprints by Live Scan or by fingerprint  
2 cards and pay the appropriate fees within 45 days of the effective date of this decision.

3 Within 72 hours of being arrested, cited or criminally charged for any offense, the respondent  
4 shall submit to the EMSA a full and detailed account of the circumstances thereof. The  
5 EMSA shall determine the applicability of the offense(s) as to whether the respondent  
6 violated any federal, state and local laws, statutes, regulations, written policies, protocols and  
7 rules governing the practice of medical care as a paramedic. Any and all notifications to the  
8 EMSA shall be by certified mail.

9 **8. Educational Course work:** No later than six months prior to the end of the probationary  
10 term, respondent shall submit to EMSA proof of completion of courses in areas substantially  
11 related to the offenses as stated in the accusation and to the satisfaction of EMSA. Any  
12 educational program may include community service to reinforce the learning objectives of  
13 the educational program. All courses must be approved by the EMSA. Within thirty-five  
14 days after completing the course work, the respondent shall submit evidence of competency  
15 in the required education. Submittal of a certificate or letter from the instructor attesting to  
16 the respondent's competency shall suffice. Any and all notifications to the EMSA shall be by  
17 certified mail.

18 **9. Ethical Practice of EMS:** Within 180 days of this Order, respondent shall submit to EMSA,  
19 for its prior approval, a course in Ethics. Respondent shall complete this course during the  
20 probationary period. Respondent shall submit to EMSA proof of completion of the approved  
21 Ethics course. Any and all notifications to the EMSA shall be by certified mail.

22 **10. Practical Skills Examination:** Within 90 days of this Order, respondent shall submit to and  
23 pass a skills examination in subjects substantially related to the accusation based on the US.  
24 Department of Transportation (USDOT) or the National Registry of Emergency Medical  
25 Technicians (NREMT) skills examination, when applicable. If the subjects are not addressed  
by the USDOT or NREMT, EMSA shall identify, approve, and utilize a local standard. The  
skills examination shall be administered by a board selected by EMSA.

If respondent fails the examination, he may function as a paramedic only while under the  
direct supervision of a preceptor. Respondent shall not be allowed to function as a sole  
paramedic until he passes the examination. If respondent fails the examination, he may retake  
it two additional times. There shall be at least a two-week period between examinations.  
After three failed attempts, or if respondent chooses not to retake the examination, his license  
shall be revoked.

**11. Oral Skills Examination:** Within 90 days of this Order, respondent shall submit to and pass  
an oral exam in subjects substantially related to the accusation. The oral exam shall be  
administered by an examination board selected by EMSA using the pre-established criteria.

If respondent fails the examination, he may function as a paramedic only while under the  
direct supervision of a preceptor. Respondent shall not be allowed to function as a sole  
paramedic until he passes the examination. If respondent fails the examination, he may retake  
it two additional times. There shall be at least a two-week period between examinations.

1 After three failed attempts, or if respondent chooses not to retake the examination, his license  
2 shall be revoked.

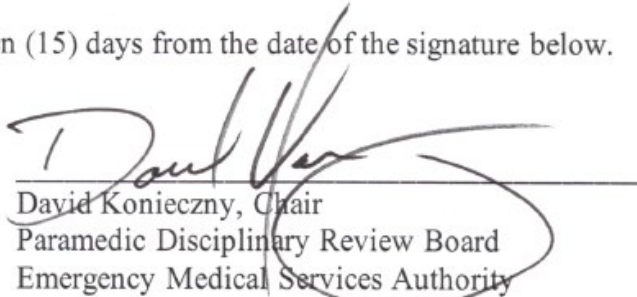
3 **12. Violation of Probation:** If during the period of probation, the respondent fails to comply  
4 with any term of probation, the EMSA may initiate action to terminate probation and  
5 implement actual license suspension/revocation. Upon the initiation of such an action, or the  
6 giving of a notice to the respondent of the intent to initiate such an action, the period of  
7 probation shall remain in effect until such time as a decision on the matter has been adopted  
8 by the EMSA.

9 An action to terminate probation and implement actual license suspension/revocation shall be  
10 initiated and conducted pursuant to the hearing provisions of the California Administrative  
11 Procedure Act. The issues to be resolved at the hearing shall be limited to whether the  
12 respondent has violated any term of his/her probation sufficient to warrant termination of  
13 probation and implementation of actual suspension/revocation. At the hearing, the respondent  
14 and the EMSA shall be bound by the admissions contained in the terms of probation and  
15 neither party shall have a right to litigate the validity or invalidity of such admissions.

16 **13. Completion of Probation:** The respondent's license shall be fully restored upon successful  
17 completion of probation.

18 This DECISION shall become effective fifteen (15) days from the date of the signature below.

19 DATED: December 6, 2024

20   
21 David Konieczny, Chair  
22 Paramedic Disciplinary Review Board  
23 Emergency Medical Services Authority

**BEFORE THE  
EMERGENCY MEDICAL SERVICES AUTHORITY  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**BRYAN H. MONKEN, Respondent**

**Agency Case No. 22-0249**

**OAH No. 2024050713**

**PROPOSED DECISION**

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 17, 2024, from Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Kim Lew, Chief of the California Emergency Medical Services Authority (EMSA or the Authority).

Respondent appeared without the assistance of an attorney.

Evidence was received, the record closed, and the parties submitted the matter for decision on October 17, 2024.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On April 3, 2020, the Authority issued respondent Emergency Medical Technician-Paramedic (EMT-P) license number P41318 (license). The license was active until April 30, 2024, when it expired. Respondent has no history of prior license discipline.

2. On April 30, 2024, complainant, in her official capacity, signed and filed an accusation (Accusation) to discipline respondent's license for: (1) violating the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (the EMS Act; Health & Saf. Code, § 1797 et seq.) and/or the associated regulations; (2) committing fraudulent, dishonest, or corrupt acts related to his licensed duties; and (3) functioning outside the supervision of medical control in the field care system operating at the local level.

3. Specifically, complainant alleged that in July 2022, while transporting a three-year-old patient to a local hospital, respondent instructed an EMT to administer the patient the anti-nausea medication ondansetron (brand name Zofran). Complainant alleged this violated the policies of the local EMS agency, and therefore the EMS Act, because administering ondansetron is an Advanced Life Support (ALS) skill that only EMT-Ps may perform. Complainant further alleged that respondent subsequently instructed the EMT to falsify the Prehospital Care Report (PCR) by documenting that respondent had administered the ondansetron. Finally, complainant alleged that respondent signed the falsified PCR.

4. Respondent timely filed a Notice of Defense to the Accusation. This hearing followed.

### **Events of July 22, 2022**

5. Emilee Flaming testified at hearing. As of July 2022, she worked as an EMT for American Ambulance. At the time, she was licensed as an EMT, which meant she was authorized to perform Basic Life Support (BLS) skills.

6. On July 22, 2022, Ms. Flaming and respondent responded to a call from a parent who reported her three-year-old son had accidentally ingested his sibling's antiseizure medication. When they arrived, respondent told Ms. Flaming she could "run the call" if the patient needed BLS services. Otherwise, if the patient required ALS services, respondent would take the lead. Ms. Flaming and respondent assessed the patient and determined he should go to a nearby hospital and needed BLS care during transport. Therefore, respondent drove the ambulance, and Ms. Flaming accompanied the patient and his mother in the back.

7. On the way to the hospital, the patient vomited. Ms. Flaming notified respondent, who pulled over and assessed the patient. Respondent then administered two milligrams of Zofran to the patient, which was half a pill. The patient improved and they continued to the hospital.

8. Approximately half an hour later, the patient vomited again. Ms. Flaming notified respondent, who instructed her to administer the second half of the Zofran pill to the patient. Ms. Flaming asked respondent if she was permitted to administer Zofran within her scope of practice. Respondent said she was, and Ms. Flaming administered the second dose of Zofran.

9. Once they arrived, respondent and Ms. Flaming transferred the patient's care to hospital personnel. Ms. Flaming then completed the required PCR. Respondent told her to write that he had administered both doses of Zofran. She did so. She subsequently signed it even though she knew it was false. She later informed her supervisor of the events because she felt uncomfortable having signed a PCR with false information.

10. Dennis Gallagher also testified at hearing. He is a special investigator for EMSA. He was assigned to investigate respondent's actions after American Ambulance reported the events of July 22, 2022, to the Central California EMS Agency (CCEMSA), the local EMS Agency that manages and directs American Ambulance's ALS program.

11. Mr. Gallagher investigated the complaint and then prepared a written report. As part of his investigation, he interviewed Ms. Flaming. As chronicled in his report, Ms. Flaming's interview statements were consistent with her hearing testimony.

12. Mr. Gallagher also reviewed relevant documents, including the PCR and CCEMSA's policies. One such policy, Number 542, delineates the division of responsibility for prehospital personnel and mandates that EMTs may only perform BLS skills. Another policy, Number 139, provides the scope of practice for paramedics. Section II(B)(17)(a)(23) of that policy identifies administering Ondansetron as an "ALS skill." Finally, policy Number 811 addresses the requirements for PCRs. Section I(A) of that policy provides PCRs "shall be filled out completely, accurately, and legibly by all ambulance and ALS first responder agencies."

13. Additionally, Mr. Gallagher reviewed respondent's written statement. According to the statement, which was also received into evidence, respondent mostly agreed with Ms. Flaming's version of events. He disagreed with her about the



circumstances under which she administered the second dose of Zofran. Specifically, respondent wrote in his statement, in relevant part:

I told [Ms. Flaming] that I would stop the ambulance so I could administer the remaining 2mg of Ondansetron but [Ms. Flaming] told me "No" and that it was ok. [Ms. Flaming] told me to keep driving and she would administer the remaining 2 mg of Ondansetron.

14. Respondent also acknowledged in his written statement, "I asked [Ms. Flaming] to document that I administered the Ondansetron." He went on to write, "[Ms. Flaming] did all of the documentation and wrote up the PCR, I did not contribute nor have I read the report/PCR still to this day. If anything was falsified it was done without my knowledge." The PCR shows respondent signed it. Based on his investigation, Mr. Gallagher referred the matter to EMSA's legal department for further action.

### **Respondent's Testimony**

15. At hearing, respondent testified that Ms. Flaming did not question whether she was permitted to administer the second dose of Zofran to the patient. Rather, she "insisted" on administering it. According to respondent, he offered to pull over a second time, but Ms. Flaming was adamant she would administer the second dose of Zofran. She also "insisted" on completing the PCR.

16. Respondent did not realize he had done anything wrong until American Ambulance investigated and ultimately fired him. He did not know it was against CCEMSA's policies, which American Ambulance must follow, for an EMT to administer Zofran. He noted that Zofran is commonly prescribed to be administered by parents at

home without any medical personnel present. He was not concerned that allowing Ms. Flaming to administer Zofran would jeopardize the patient's safety.

17. Respondent instructed Ms. Flaming to note in the PCR that he had administered both doses of Zofran because, while in the ambulance, there was "something in the back of [his] mind" telling him that he should be the one to administer Zofran. However, he chose not to in the moment because Ms. Flaming forcefully instructed him to "keep driving." When they arrived at the hospital, respondent looked up CCEMSA's policies on his phone and confirmed he should have administered both doses of Zofran. He therefore told Ms. Flaming to write in the PCR that he had administered both doses. He then signed the PCR despite it containing false information.

18. Respondent has not worked as a paramedic since American Ambulance terminated his employment in July 2022. He allowed his license to expire and does not intend to pursue his career as a paramedic. However, he does not want his license to be revoked, as he fears that may impede other career opportunities in the future.

## **Analysis**

19. It is undisputed that Ms. Flaming administered Zofran to a patient on July 22, 2022. It is also undisputed that, as an EMT, she was not authorized to do so, as administering Zofran is an ALS skill pursuant to CCEMSA's Policy Number 139. Finally, it is undisputed that, based on respondent's instruction, Ms. Flaming falsified the PCR to note that respondent had administered both doses of Zofran to the patient.

20. The only disputed material fact is whether respondent instructed Ms. Flaming to administer the second dose of Zofran. Resolving this dispute requires a credibility determination between Ms. Flaming and respondent.

21. Ms. Flaming's testimony was credible. Her testimony at hearing was consistent with her prior statements about the events. In addition, she subsequently reported the episode to her supervisor. Finally, her attitude and demeanor enhanced her credibility. She did not equivocate, even when acknowledging that she signed the PCR despite knowing it contained false information.

22. In contrast, respondent's testimony was not credible. His testimony was inconsistent with his written statement. Specifically, he wrote in his statement that Ms. Flaming "did all of the documentation and wrote up the PCR, I did not contribute nor have I read the report/PCR still to this day. If anything was falsified it was done without my knowledge." Nevertheless, he acknowledged at hearing that he signed the PCR despite knowing it contained false information. Additionally, respondent acknowledged telling Ms. Flaming to falsify the PCR after he looked up CCEMSA's policies and confirmed he should have not allowed her to administer the second dose of Zofran. This admission of intentional dishonesty to disguise his wrongdoing weakened his credibility.

23. Based on the above, complainant proved respondent violated the rules governing his license and engaged in fraud and dishonesty. However, the inquiry does not end there. After complainant establishes a basis to discipline respondent's license, respondent is entitled to present evidence of rehabilitation. When evaluating respondent's rehabilitation, the Authority must consider: (1) the nature and severity of the acts; (2) the recency of the acts; and (3) any other evidence of rehabilitation. (Cal. Code Regs., tit. 22, § 100111.04, subd. (a).)

24. Here, respondent's first act of misconduct, instructing an EMT to perform an ALS skill, was serious and demonstrates a significant lack of good judgment. However, respondent's second act of misconduct, instructing an EMT to falsify a PCR,

was a blatantly dishonest act designed to cover up his wrongdoing. Emergency medical personnel must accurately chronicle their actions, even when doing so will expose them to professional consequences. A paramedic who falsifies records to protect himself places his own interests ahead of his patients. Here, respondent's misconduct is even more egregious, as he testified he did not realize he had done anything wrong until American Ambulance fired him. Nevertheless, he knew he had instructed Ms. Flaming to perform an ALS skill, he knew he had instructed her to falsify the PCR, and he knew he signed the false PCR.

25. The purpose of an administrative disciplinary action is not to punish the licensee for his misconduct, but rather to ensure he does not exercise his license privileges contrary to the public interest. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Here, based on respondent's multiple acts of wrongdoing, coupled with his lack of insight into and accountability for the gravity of his misconduct, the appropriate remedy to protect the public is to revoke respondent's license.

## **LEGAL CONCLUSIONS**

1. The standard of proof for this matter is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal, as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

2. In a disciplinary action such as this, rehabilitation is akin to an affirmative defense, and the burden of proof of establishing rehabilitation is therefore on the

respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.) This is consistent with the general rule placing the burden of proof on one who asserts a claim or defense. (Evid. Code, § 500.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

3. Under the EMS Act, CCEMSA adopted Policy Numbers 542, 139, and 811:

The local EMS agency, using state minimum standards, shall establish policies and procedures approved by the medical director of the local EMS agency to assure medical control of the EMS system. The policies and procedures approved by the medical director may require basic life support emergency medical transportation services to meet any medical control requirements including dispatch, patient destination policies, patient care guidelines, and quality assurance requirements.

(Health & Saf. Code, § 1797.220.)

4. The Authority may discipline a paramedic's license for "[v]iolating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations adopted by the authority pertaining to prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(7).)

5. As discussed above, respondent violated CCEMSA Policy Numbers 542 and 139 when he instructed Ms. Flaming, an EMT, to administer ondansetron to a patient. Specifically, Policy Number 139 provides that administering ondansetron is an ALS skill. Therefore, under Policy Number 542, only an EMT-P was authorized to

administer that medication. Cause therefore exists to discipline respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(7).

6. The Authority may discipline a paramedic's license for "[t]he commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel." (Health & Saf. Code, § 1798.200, subd. (c)(5).) As discussed above, respondent engaged in a fraudulent, dishonest, or corrupt act when he instructed Ms. Flaming to falsify the PCR and then signed the falsified document. Cause therefore exists to discipline respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(5).

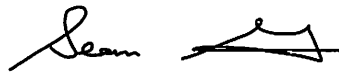
7. The Authority may discipline a paramedic's license for "[f]unctioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification." (Health & Saf. Code, § 1798.200, subd. (c)(10).) As discussed above, respondent acted outside the supervision of CCEMSA when he violated Policy Numbers 542, 139, and 811 by instructing Ms. Flaming, an EMT, to administer ondansetron to a patient, and by subsequently instructing Ms. Flaming to falsify the PCR and then signing the falsified document. Cause therefore exists to discipline respondent's license pursuant to Health and Safety Code section 1798.200, subdivision (c)(10).

8. As discussed above, when all the causes for discipline and rehabilitation factors and evidence are considered, revoking respondent's license is warranted. Lesser discipline, including placing respondent's license on probation subject to appropriate terms and conditions, would not satisfy the Authority's mandate of public protection.

**ORDER**

Emergency Medical Technician-Paramedic license number P41318, issued to respondent Bryan H. Monken, is REVOKED.

DATE: November 18, 2024

A handwritten signature in black ink, appearing to read "Sean Gavin". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings